

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)

In Re: Motion for Appointment  
of a Special Prosecutor

)

Cause No. 1922-CC10932

)

Division 1

Memorandum

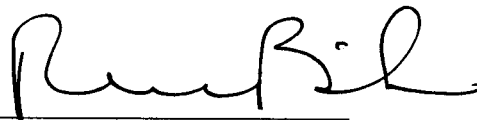
Report of Special Prosecutor filed.

SO ORDERED:

**FILED**  
NOV 07 2019

22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

Date: November 7, 2019



Rex M. Burlison  
Presiding Judge  
22<sup>nd</sup> Judicial Circuit  
Division 1

MICHAEL W. BRADLEY  
Columbia, Missouri

**FILED**  
NOV 07 2019  
22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY JG DEPUTY  
10:55 AM

November 6, 2019

Honorable Rex Burlison  
St. Louis Circuit Court  
10 N. Tucker Blvd.  
St. Louis, Missouri 63101

RE: Investigation of tampering with a public officer

Dear Judge Burlison:

As the appointed special prosecutor in the investigation of tampering with a public officer, requested by St. Louis circuit attorney Kim Gardner, I have reviewed the St. Louis Metropolitan Police Department investigation report, conducted interviews of relevant witnesses and reviewed the applicable law.

I considered requesting the assistance of the Missouri State Highway Patrol to aid in the investigation. After meeting with the St. Louis Metropolitan Police Department officer who conducted their investigation and reviewing the report, I found that the St. Louis officer performed a thorough and unbiased investigation, thus an investigation by the MSHP would be redundant.

Shortly after my appointment, I was contacted by members of the St. Louis media. My experience with the St. Louis media is that they are very professional and competent. They respected my declining to be interviewed and goal that the result of my work be reported to the court.

My conclusion is that there was not evidence of the commission of any crime; therefore, no charges will be filed. A report setting out the reasoning of this conclusion is enclosed.

Because of the public interest in this matter I decided to not use a grand jury. A grand jury proceeding is confidential. My goal was to pursue the investigation in such a way that all of the facts are available for public scrutiny.

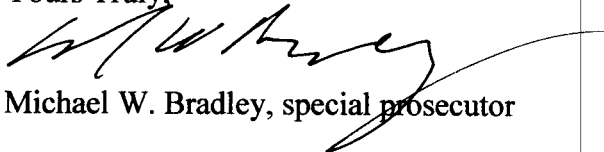
If my decision were to file charges, instead of a grand jury indictment, I would have filed a complaint in the Associate Circuit Division of the Circuit Court and proceed to a preliminary hearing. The preliminary hearing would be an open hearing in front of a Judge, where the State must show probable cause to believe that a crime was committed and probable cause to believe the charged defendant committed the crime.

Since charges will not be filed, the public still has a right to know the circumstances involved in this matter.

The public policy, under the Sunshine Law, is to promote open records; Section 610.011 RSMo. It is my belief that the materials gathered fall within the definition of an "investigation report", Section 610.100.1(5) RSMo. Section 610.100.2(2) RSMo provides that "investigation reports of all law enforcement agencies are closed records until the investigation becomes inactive." Since this investigation is now inactive, it is my opinion that the investigation reports are now open records and may be made available to the public.

With my report, I have enclosed a copy of the St. Louis Metropolitan Police Department investigation report and transcripts of all of the witness statements. The only material that I reviewed but am not enclosing are the transcripts of the hearings before the Court in each of the two criminal cases regarding the former Governor, since each case was dismissed those records are now closed to the public, Section 610.105 RSMo.

Yours Truly,

A handwritten signature in black ink, appearing to read "Michael W. Bradley", with a long, sweeping horizontal line extending to the right.

Michael W. Bradley, special prosecutor

**FILED**

NOV 07 2019

22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY Sh DEPUTY

10:35 AM

**REPORT  
OF THE SPECIAL PROSECUTOR  
CONCERNING THE INVESTIGATION OF  
TAMPERING WITH A PUBLIC OFFICER**

Special Prosecutor Michael W. Bradley

November 6, 2019

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## SUMMARY

This report is submitted to the Honorable Rex Burlison, Presiding Judge of the Circuit Court of the City of St. Louis, Missouri.

Kimberly Gardner serves as the elected Circuit Attorney for the City of St. Louis, Missouri.<sup>1</sup>

The Circuit Attorney filed a Motion requesting the appointment of a special prosecuting attorney to investigate and make charging decisions relating to tampering with a public officer. On July 16, 2019, Presiding Judge Rex Burlison issued an Order appointing Michael W. Bradley special prosecuting attorney.

This matter arises out of the defense of former Governor Eric Greitens from criminal charges filed by the Circuit Attorney in 2018.

I reviewed the St. Louis Metropolitan Police Department investigation and conducted further interviews. I interviewed Circuit Attorney Kimberly Gardner, Assistant Circuit Attorney Rachel Smith<sup>2</sup>, Assistant Circuit Attorney Christopher Hinckley<sup>3</sup>, former Assistant Circuit Attorney Robert Dierker<sup>4</sup>, John Garvey<sup>5</sup>, Edward Dowd, James Martin and Michelle Nasser. A court reporter was present and transcribed all interviews.

In the July 17, 2019 St. Louis Post Dispatch Mr. Martin was quoted as saying: "The police officers investigating this matter have told us that no one, including two members of Ms. Gardner's staff, have provided any evidence that there was a threat." The St. Louis Police lead investigating officer, Sgt. Carl Cunningham, denied ever making such a statement to Mr. Martin or anyone else. Any statement by a member of the Police Department concerning this case is irrelevant because the decision to charge a crime is made solely by the prosecuting attorney, not law enforcement.<sup>6</sup>

To be found guilty of tampering with a judicial officer, an individual must make a statement with the purpose to harass, intimidate or threaten the judicial officer. The statement

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<sup>1</sup> In the City of St. Louis the title to the office is Circuit Attorney, in the rest of Missouri the title to the office is Prosecuting Attorney.

<sup>2</sup> Rachel Smith and I worked at the Missouri Attorney General's Office at the same time.

<sup>3</sup> Christopher Hinckley and I worked for the Missouri Gaming Commission at the same time.

<sup>4</sup> Robert Dierker is a retired Circuit Judge.

<sup>5</sup> John Garvey is a retired Circuit Judge.

<sup>6</sup> Marin statement T-15 L-7.

must not be the type made in the normal course of a legal proceeding. The intent of the speaker controls; not the reaction of the person to whom it was directed.

The team of attorneys defending Gov. Greitens conducted a vigorous defense.

During a meeting held on March 16, 2018, members of the defense team told the Circuit Attorney of their belief that the State's case was weak and asked for the case to be dismissed. The attorneys stated to the Circuit Attorney words to the effect: 'things are going to get worse'.

These statements, while aggressive, were made in the normal course of litigation and did not show intent on the part of the defense team to harass, intimidate or threaten the Circuit Attorney.

On April 18, 2018, members of the defense team met with members of the Circuit Attorney's office. At that meeting the defense team informed the Circuit Attorney's office that they believed that an investigator hired by the Circuit Attorney was not truthful during his deposition and that Circuit Attorney, who also was present at the deposition, did not correct the inaccuracy of his statements. The defense team stated that they planned to report the Circuit Attorney to the Missouri Bar Disciplinary Counsel.

The Rules of Professional Conduct include the requirement that an attorney is required to report suspected unethical behavior of another attorney.<sup>7</sup> The statements made were merely notifying the Circuit Attorney's office of their intent to file a complaint. Thus, these statements did not show intent on the part of the defense team to harass, intimidate or threaten the Circuit Attorney.

## **Conclusion**

Based on applying the known facts in this case to the applicable law, it is my opinion that no crime was committed. Therefore, no criminal charges will be filed.

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<sup>7</sup> Rule 4-8.3 requires a lawyer to report another lawyer for breaches of the Rules of Professional Conduct.

## **FACTS**

### **Background**

In this case the allegation of tampering with a judicial officer is the result of things said by the defense team during meetings held on March 16, 2018 and April 18, 2018 between the Circuit Attorney's office and the defense team.

The result of the investigation found that all of the statements of alleged tampering were orally made; none of the potential tampering statements were made in writing.

Since there was no document which contained relevant information, or could lead to the discovery of relevant information, I did not seek any search warrants or investigative subpoenas. Further, I did not possess any probable cause to request the Court to issue any search warrants or investigative subpoenas.

During early 2018, two issues involved the City of St. Louis Circuit Attorney's office and Gov. Greitens. One issue involved the allegation concerning a photograph of a woman. The second involved a computer and campaign finance.<sup>8</sup>

On February 22, 2018, a St. Louis grand jury returned an indictment against Gov. Greitens based on allegations involving a photograph of a woman.

The attorneys hired to defend Gov. Greitens were: James Bennett, Edward Dowd, James Martin, John Garvey, Michelle Nasser and Scott Rosenblum.

The defense team vigorously contested the facts and law presented by the State. The local media reported that defense attorney, Scott Rosenblum, agreed that the defense was a "scorched earth" strategy.<sup>9</sup>

### **March 16, 2018 Meeting**

On March 16, 2018 a meeting was held between members of the Circuit Attorney's office and the defense team, at the request of the defense team. The meeting was held in the library at the Circuit Attorney's office. In attendance from the Circuit Attorney's office were Circuit Attorney Kimberly Gardner, Assistant Circuit Attorneys Robert Dierker and Rachel Smith. In attendance from the defense team were John Garvey, Edward Dowd, Scott Rosenblum and Michelle Nasser.<sup>10</sup>

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<sup>8</sup> Each of these two cases was dismissed; as such the record of each case is now a closed record, Section 610.105 RSMo.

<sup>9</sup> St. Louis Post-Dispatch, May 16, 2018.

<sup>10</sup> The meeting was not recorded, thus the statements are based on the witnesses memory.



The defense attorneys requested the meeting in order explain their position that Gov. Greitens' actions with regard to the computer and campaign finance issue was not criminal behavior and to convince the Circuit Attorney not to file charges on that issue. In addition to their oral arguments, the defense attorneys presented to the Circuit Attorney copies of written decisions made by the Missouri Ethics Commission in other cases.

The defense attorneys also argued that Gov. Greitens was not guilty of the pending charge involving the photograph of a woman and requested that the Circuit Attorney dismiss that charge.

One of the issues raised at this meeting was the Circuit Attorney's use of an out of state attorney, Ronald Sullivan. The defense team alleged that Mr. Sullivan also represented individual defendants in cases outside of Missouri; therefore, they argued his representation of the State in the pending case was a criminal violation of Missouri law.<sup>11</sup> The State's position was because Mr. Sullivan did not represent individual defendants in Missouri he was legally entitled to be admitted to practice in this case and there was no violation of the ethical standards or Missouri law.<sup>12</sup>

In her interview with the police investigator, on September 18, 2018, Circuit Attorney Gardner stated, "Along with the rest of them that basically they said if I proceed further with any other charges, that – you know, basically my career would be ruined and things would get difficult. They kept referring – Jack – Jack Garvey repeatedly said things are going to get worse."<sup>13</sup> In her statement, taken on September 20, 2019, the Circuit Attorney Gardner recalls, "He said it's only going to get worse. We didn't know what he is saying. We was like, what do you mean, it's only going to get worse. Things are only going to get worse. He just kept saying it over and over again."<sup>14</sup>

Assistant Circuit Attorney Rachel Smith recalls that Mr. Jack Garvey said that the Circuit Attorney will be embarrassed by the motion regarding Mr. Sullivan. In her interview with the police investigator, on September 26, 2018, she told the police: "And I looked at him like, Jack, you're wrong. And he just – he looked right back at me and he said things are just – there's more of this coming, there's more of this coming, things are going to get worse."<sup>15</sup> In her statement, taken on October 22, 2019, the Assistant Circuit Attorney Smith stated, "Jack basically talked – let everyone know that the office was going to be embarrassed and Kim was going to be

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<sup>11</sup> Section 56.360 RSMo.

<sup>12</sup> On March 18, 2018, the defense team filed a Motion to Disqualify Mr. Sullivan; on March 23, 2018 the State filed a response to this Motion. On March 26, 2018 the Court denied the Defense Motion to Disqualify Mr. Sullivan.

<sup>13</sup> Gardner police interview T-5 L-15.

<sup>14</sup> Gardner statement T-15 L-9.

<sup>15</sup> Smith police interview T-9 L-4.

embarrassed by the revelation in their upcoming motion that Ron Sullivan was allegedly committing a crime.”<sup>16</sup>

Based on the defense teams’ investigation into Mr. Sullivan’s background, the State’s attorneys surmised that the defense team may be doing background investigation on other individual prosecutors. In her October 22, 2019 statement Rachel Smith stated: “That was what began the process. They talked very critically of how embarrassing it was going to be to the circuit attorney. How –they made it very clear that their intention was to dig into the conduct of each member of the team. Clearly designed to, you know – it could all go away if the case went away.”<sup>17</sup>

In her September 26, 2018 interview with the police Rachel Smith, regarding the issue of Mr. Sullivan practicing in Missouri, told the defense team: “You’re wrong. And they didn’t even have the right statute involved when they were talking about it. They were just flat out wrong. But it – Jack’s the one who made it personal. Jack’s the one who turned it into a threat.”<sup>18</sup> Thus, the defense statements concerning the Circuit Attorney were interpreted, by Smith, at a more personal level and was the basis of the perception of a threat.<sup>19</sup>

In his interview with the police on October 2, 2018, Mr. Dierker said, “And I think Judge Garvey – my recollection of what he said is this is going to get worse instead of better, alluding to the – I think the political as well as the legal aspect.”<sup>20</sup> In his statement on October 22, 2019, Mr. Dierker recalls, “I think it was Jack Garvey said this is going to get worse or there will be – there are going to be bad things—I’m not quoting exactly – it’s just going to –situation will get worse.”<sup>21</sup>

In his interview with the police on October 23, 2018, defense attorney John Garvey stated: “At then at that meeting we advised her, look, if you’re going to pursue this – this – and – and I think the words were this is the type of case that can ruin a career.”<sup>22</sup> In his statement on September 13, 2019, Mr. Garvey does not recall telling the Circuit Attorney that things are going to get worse.<sup>23</sup>

Mr. Dowd, in his interview of February 1, 2019, told the police: “What I do remember is I think Jack said something to the effect of this is – is a bad case, talking about the privacy case. This is a bad case. It’s not going to get any better, it’s going to get worse.”<sup>24</sup> In his interview of September 13, 2019, Mr. Dowd remembers a discussion with the Circuit Attorney “Then Jack

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<sup>16</sup> Smith statement T-10 L-7.

<sup>17</sup> Smith statement T-11 L-5.

<sup>18</sup> Smith police interview T—15 L-17.

<sup>19</sup> Smith statement T-13 L-3 to T-15 L-12.

<sup>20</sup> Dierker police interview T-7 L-20.

<sup>21</sup> Dierker statement T-8 L-19.

<sup>22</sup> Garvey police interview T-9 L12.

<sup>23</sup> Garvey statement T-14 L-18.

<sup>24</sup> Down police interview T-8 L-23.

Garvey said how do you think your case is going? Meaning the first case, the privacy case. And she said I think or I believe that I can make a submissible case. And Scott said, you can't make a submissible case, which, of course, was totally accurate because they never did have a picture or any evidence of transmission or anything like that, which is what I would have pointed out to her if I had a chance to meet with her before she brought the indictment. And then Jack said something to the effect of, you know, your case is not going to get better, it's only going to get worse..."<sup>25</sup>

At his statement taken on September 20, 2019, Scott Rosenblum recalled nothing out of the ordinary in the March 16, 2018 meeting, "I think we probably did discuss the merits of the case. Just in a way that defense lawyers would discuss with a prosecutor that goes on in every case."<sup>26</sup>

Michelle Nasser, during her police interview on February 1, 2019, stated "Scott Rosenblum said you don't have a submissible case. And then talking about the evidence, Jack Garvey said it's going to get tougher, not easier, about the evidence. That was the extent of that. That was the end of the conversation."<sup>27</sup> Nasser during her statement taken on September 13, 2019, recalls of the meeting, "Mr. Rosenblum or Judge Garvey asked that side of the table, asked the prosecutor's side of the table how do you think the current case is going. And I believe Ms. Gardner said we think we have a submissible case. Mr. Rosenblum said back to that side of the table, no, you don't. Then I believe Mr. Garvey then said to that side of the table that the case is only going to get tougher, which to me is not a remarkable statement."<sup>28</sup>

#### **April 18, 2018 Meeting**

On April 18, 2018 a meeting was held between Assistant Circuit Attorneys Robert Dierker and Christopher Hinckley and defense attorneys James Martin and John Garvey.<sup>29</sup>

In his interview on October 23, 2018, Mr. Garvey told the police that, "I was advised very strongly by my co-counsels, two of them, do not make any threats against the circuit attorney. Do not promise her anything in exchange for her dismissing the charges. Do not tell her that we won't file a lawsuit against her personally for malicious prosecution and – and whatever else."<sup>30</sup>

Mr. Martin in his interview with the police on February 7, 2019 stated "And it -- the discussion was not at all because I was concerned I need to control Jack Garvey. The conversation was I need to make sure we cover every basis to make sure we do this right.

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<sup>25</sup> Dowd statement T-13 L-11.

<sup>26</sup> Rosenblum statement T-6 L-14.

<sup>27</sup> Nasser police interview T-6 L-10.

<sup>28</sup> Nasser statement T-8 L-1.

<sup>29</sup> The meeting was not recorded, thus the statements are based on the witnesses memory.

<sup>30</sup> Garvey police interview T-17 L-20.

Because when you're defending the Governor of the state of Missouri in a criminal charge and accusing the city – the lead prosecutor of the city, top law enforcement officer of the city of crimes, you need to make sure you are very careful about it.”<sup>31</sup>

Also, during the April 16, 2018 meeting the defense attorneys alleged that the Circuit Attorney committed ethical violations in her handling of Mr. Tisaby's deposition testimony.<sup>32</sup>

In his statement taken on October 22, 2019, Mr. Dierker recalls, “I know the issue of bar complaints came up at some point. ... I know Mr. Martin was especially vehement that we were being unethical and that he felt that Kim's failure to correct the deposition immediately was unethical. So if it wasn't expressed it was certainly implied that they thought they had the ingredients for a bar complaint.”<sup>33</sup>

Mr. Hinckley recalled, at his statement taken on October 22, 2019, “The – as I recall, Judge Garvey, I'll refer to him as Judge Garvey, same as Jack Garvey, playing out how the case was going, and therefore, how it most likely was going to play out and the likely results and how this would obviously to him be very detrimental, if not ruinous, and I think that's the word I recall him using, to Kim Gardner's career. And not just as circuit attorney, but as an attorney. Because of I think he referred to Judge Burlison reporting this alleged nefarious conduct to the bar.”<sup>34</sup>

Mr. Garvey told the police, in his interview on, October 23, 2018, “So—and I did mention, I said if she keeps on going down this road, that involves people's licenses, that involves people's reputations. And we kind of really focused on the reputation. We said look, this is – this will be her legacy, this case, if she continues to pursue this. Because the case is a loser and it's going to be embarrassing. So that's what we put out to her.”<sup>35</sup>

In his statement on September 13, 2019, Mr. Garvey stated, “I talked most of the meeting. Mr. Martin did not talk that – what –to give you context was we clearly told them that we were not there to plea bargain. We were there for them to dismiss the case. Then I kind of gave a review of the case. Mr. Tisaby was a disaster. He got caught lying. Kim Gardner got caught lying. She lied to the grand jury. She lied to the Judge. She lied to us. She withheld evidence. That these things had already happened. And we were now going to request – we were filing a motion for us to take the deposition of Kim Gardner. And once – the Judge was going to

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<sup>31</sup> Martin police interview T-17 L13.

<sup>32</sup> It is alleged in a pending criminal matter, Case No. 1922-CR01819, that during a deposition Mr. Tisaby made material misrepresentations of fact that were not corrected by the Circuit Attorney. The allegations in that case are not relevant to this investigation except as to provide some content to later actions and statements made by the defense attorneys.

<sup>33</sup> Dierker's statement T-14 L-9.

<sup>34</sup> Hinckley's statement T-8 L 19.

<sup>35</sup> Garvey police interview T-20 L-14.

grant that because we knew now Kim Gardner was part of the investigation. Once the videotape came out it was clear that just like a police officer involved, she was now the subject matter of the investigation, her bias. So in that context what I said was, this has already happened and so now what's going to happen is we will have permission to take her deposition, and I pointed to Mr. Martin, and he will take her deposition, and she will lie again or she will take the Fifth Amendment or she will end up dismissing the case. And then I said these are things that can result in criminal charges against Mr. Tisaby and possibly Kim, and we are talking about licensing-type things there. But it was the context of this had already happened and this was not – this was out of our control.”<sup>36</sup>

Mr. Martin, in his statement of September 13, 2019, “I certainly don’t remember her career is going to be ruined, but her reputation, in my view, was being dramatically damaged. I am sure that we suggested that stopping it would stop the bleeding. Not in a way of you do this for us, we will do this for you. But rather in if you dismiss it, there is no more motions to file. There is no more fighting to be had.”<sup>37</sup>

The time line supports Mr. Martin’s contention that the defense team did not make offer to trade dismissal of the criminal case for not reporting alleged ethical violations. The defense team raised the issue of the inaccurate statements made in Mr. Tisaby’s deposition to the trial judge in open court on April 12, 2018, on April 18, 2018 the defense filed a Motion to Disqualify the Circuit Attorney based on the actions at Tisaby’s deposition. Therefore, any information that would be in a bar complaint was public at that time of the April 18, 2018 meeting. So dismissal of the case would not have prevented the information from being released to the public.

### **Subsequent Events**

Circuit Attorney Gardner, on April 19, 2018, reported to the Court “There’s some severe allegations that are being made on the defense counsel’s tactics to bully the Circuit Attorney’s Office into doing what they want.” The trial court replied “If your allegations are to the level that you feel they need to be investigated, then you have to take that upon yourself and make those decisions.”<sup>38</sup>

The grand jury issued an indictment alleging that Mr. Greitens committed a criminal violation with regard to the computer and campaign finance issue, on April 20, 2018.

Prior to the start of the jury trial, on May 14, 2018, the Circuit Attorney dismissed the case involving a photograph of a woman, and disqualified herself from that matter.

On May 15, 2018, Susan Ryan of the Circuit Attorney’s office ran into defense attorney John Garvey at a birthday party held in honor of a mutual friend’s mother. Susan Ryan stated,

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<sup>36</sup> Garvey statement T-19 L-15 to T-20 L 20.

<sup>37</sup> Martin statement T-10 L20.

<sup>38</sup> Transcript of the April 19, 2018 hearing.

during her statement taken on October 22, 2019, that John Garvey, “introduced his wife to me. I reached out my hand and I said, ‘I’m sure I am a swear word in your house. My name is swear word in your house right now.’ And she laughed and Judge Garvey said something to the effect of, oh, Susan, nobody is mad at you or anything. And I said, ‘well, that’s good. But boy you sure did a number on Kim Gardner.’ He said, ‘well, we told her what we were going to do and we did what we said we were going to do.’ ... All I said was, ‘wow, you sure did,’”<sup>39</sup>

John Garvey recalls the incident in his statement given on September 13, 2019 he states that Susan Ryan appeared in the courtroom on the day the case was dismissed. He recalled the conversation at the birthday party, “So I said to her: ‘Susan, we didn’t know what was going to happen. We thought maybe she was going to push forward, sit for a deposition, but we knew she wouldn’t go under oath. So once we saw you show up we knew the case was over.’ And she started laughing, and I started laughing, and she said: ‘I have to hand it to you, Jack. You told us what you were going to do, what you guys were going to do and you did it. And it’s over. That’s what she said.’”<sup>40</sup>

The Court, on May 21, 2018, appointed the Jackson County Prosecuting Attorney Jean Peters Baker as special prosecuting attorney with regard to the photograph of a woman case.

The Jackson County Prosecuting Attorney, with the assistance of the Missouri State Highway Patrol, conducted further investigation concerning that case. With the statute of limitation expiring, the special prosecutor declined to refile the charges.

At her press conference to announce her decision, the Jackson County Prosecutor said: “I find this victim extremely credible. I believe her statements about there being a photograph as true”.<sup>41</sup>

The City of St. Louis Circuit Attorney, on May 30, 2018, dismissed the case concerning the computer and campaign finance issue.

On June 1, 2018, Eric Greitens resigned as Governor of Missouri.

In June 2018, Circuit Attorney Gardner reported to St. Louis Metropolitan Police Department that threats were made to her by the defense attorneys.

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<sup>39</sup> Ryan statement T-8 L-24.

<sup>40</sup> Garvey statement T-28 L-12.

<sup>41</sup> St. Louis Post-Dispatch June 9, 2018.

## LAW

### **Statute**

Section 575.095 RSMo provides that tampering with a judicial officer is a class D felony, with a range of punishment of a term of up to one year in the county jail or imprisonment in the Department of Corrections for a term not to exceed seven years, a fine not to exceed \$10,000, or a combination of imprisonment and a fine. The statute lists the circuit attorney in the definition of a judicial officer, Section 575.095.2 RSMo.

The elements of tampering with a judicial officer are set out in the Missouri Supreme Court's approved jury instruction, MAI-CR 3d 329.85.

### **Case Law**

Tampering with a judicial officer has been explained by the Court of Appeals: "Under the statute, a defendant must engage in conduct reasonably calculated to harass or alarm a judicial officer, and the defendant must do so with the purpose to harass, intimidate or influence a judicial officer in a judicial proceedings. ... Further, the statute does not prohibit a statement merely because it happens to alarm the person to whom it is directed. Rather, it prohibits that statement only if its speaker made it with a purpose to harass, intimidate or influence the person in the context of a judicial proceeding. The plain meaning of the words of the statute is that it prohibits speech only to the extent that it offends the State's legitimate interest in securing its judicial proceedings."<sup>42</sup>

The statements must not be of the kind ordinarily made in judicial proceedings. The statement must be made for the purpose of influencing the judicial officer to take certain action. "It is not the type of comment made in the normal course of a legal proceeding such as when an attorney informs the trial court he is going to file a writ or appeal a judge's decision."<sup>43</sup>

It has been stated that: "Nothing in the tampering statute requires the State to prove that an individual's actions affect a judicial officer in performing official duties in a specific case. Rather, the statute speaks only in terms of affecting the judicial officer in the performance of the officer's official duties generally."<sup>44</sup>

### **Examples of Tampering With A Judicial Officer**

The following are examples of cases where a conviction for tampering with a judicial officer was affirmed.

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<sup>42</sup> *State v. McGirk*, 999 S.W.2d 298, 302 (Mo. App. 1999).

<sup>43</sup> *State v. Adams*, 229 S.W.3d 175, 182 (Mo. App. 2007).

<sup>44</sup> *State v. Hause*, 371 S.W.3d 836, 840 (Mo. App. 2012).

In *McGirk*, the Defendant threatened a judge by going to the courthouse, finding the Judge and when the Judge told him he could not talk to the Defendant privately concerning a pending matter the Defendant told the Judge “I will take care of you” and stood staring at the Judge for about a minute.<sup>45</sup>

In *Hamilton*, the Defendant told law enforcement that he was going to kill his parole officer when he was released from prison.<sup>46</sup>

In *Adams*, the Defendant threatened a judge by repeatedly threatening a baseless civil suit against the Judge if the case was not dismissed and shouting at the Judge in the Courtroom when the case was not dismissed.<sup>47</sup>

In *Wolfe*, the Defendant threatened a judge by repeatedly writing insulting letters that threatened “blood” if the case was not dismissed.<sup>48</sup>

In *Jindra*, after the Judge denied Jindra’s adult abuse petitions, Jindra threatened the judge by telling the Judge that he was going to get his gun. Jindra then called the Judge’s husband, who is an attorney, and told the husband’s receptionist that he would meet the Judge’s husband in the office parking lot. After he was arrested, Jindra confessed to law enforcement that he promised to the Judge to do certain things to the Judge and her husband such as “he had promised to shoot them in the legs and not kill them.”<sup>49</sup>

In *Hause*, after criminal charges were filed against Hause, he threatened a judge by repeatedly leaving telephone messages at the Judge’s home threatening physical violence or death. In those messages, Hause related specific information demonstrating his knowledge of the Judge’s habits and locations.<sup>50</sup>

In *Bell*, the Defendant sent faxes to a judge concerning cases pending before the Judge. The faxes told the Judge to recuse himself and release a friend of Bell’s or “this might get ugly for you” and the Judge would “face dire consequences”.<sup>51</sup>

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<sup>45</sup> *State v. McGirk*, 999 S.W.2d 298 (Mo. App. 1999).

<sup>46</sup> *State v. Hamilton*, 130 S.W.3d 718 (Mo. App. 2004).

<sup>47</sup> *State v. Adams*, 229 S.W.3d 175 (Mo. App. 2007).

<sup>48</sup> *State v. Wolfe*, 332 S.W.3d 877 (Mo. App. 2011).

<sup>49</sup> *State v. Jindra*, 504 S.W.3d 187 (Mo. App. 2016).

<sup>50</sup> *State v. Hause*, 371 S.W.3d 836 (Mo. App. 2012).

<sup>51</sup> *State v. Bell*, 558 S.W.3d 598 (Mo. App. 2018).



## **Summary**

In summary, to be a crime the intent of the speaker must be to harass, intimidate or threaten a judicial officer. The statement must be one that is not made in the ordinary course of litigation. The intent of the speaker, not the reaction of the hearer, governs.

## **CONCLUSION**

Reviewing the facts of the case with the language of Section 575.095 RSMo and the cases cited above, there is not probable cause to believe that tampering with a judicial officer was committed.

The defense team was vigorously attempting to persuade the Circuit Attorney to dismiss the case. Such aggressive behavior by the defense team, while being described as a “scorched earth” tactic, is not a criminal threat. The evidence in this case does not support the conclusion that the defense team intended to threaten or harass the Circuit Attorney.

Therefore, as special prosecuting attorney I will not be filing any criminal charges.